IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No. 33476 of 2006

1. R.Kannan
2. K.Palanisamy
3. S.Sundaramohan
4. R.Balasubramanian
5. A.Alphones
6. S.Sadasivam
7. R.Muthukrishnan
8. Senni Sivanandam
9. S.Ramalingam
10. R.K.Durai .. Petitioners

vs.

Tamil Nadu Electricity Board
rep. by its Board of Directors
No. 800 Anna Salai
Chennai - 2 .. Respondent

Petition filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorarified Mandamus calling for the records from the respondent, quash the order bearing (Per) B.P. (FB) No. 58 (Secretariat Branch) dated 14.11.2005 in so far as failing to give the fitment benefit and service weightage and consequently direct the respondent to revise the salary / wages of the petitioners with effect from 01.12.2000 by giving fitment benefit and service weightage and arrive at the pension of the petitioners based on their revised salary / wages on the date of retirement, pay the arrears as given to persons who retired from 01.12.2002 onwards.

For Petitioner : Mr. Balan Haridass
For Respondent : Mr. M.Vaidyanathan

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ORDER

I have heard the arguments of Mr. Balan Haridass, learned counsel appearing for the petitioner and Mr. M.Vaidyanathan, learned counsel appearing for the second respondent and have perused the records.

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2. The ten petitioners were all retired from service after holding various posts as found in paragraph 4 of the affidavit somewhere between 31.3.2001 and 31.7.2002. In this petition, the petitioners are challenging the proceedings of the respondent Tamil Nadu Electricity Board [for short, 'Board'] made in (Per) B.P. (FB) No. 58 (Secretariat Branch) dated 14.11.2005 insofar as it fails to give fitment benefit and service weightage and for a direction to the respondent to revise the salary / wages of the petitioners with effect from 01.12.2000 by giving fitment benefit and service weightage and arrive at the pension of the petitioners based on their revised salary / wages on the date of retirement, pay the arrears as given to persons who retired from 01.12.2002 onwards.

3. The proceedings of the Board dated 14.11.2005 were issued in the context where the wage revision was effected with effect from 01.12.2002. It was stated in the earlier Board proceedings dated 16.10.2005 that though the revision of wages was due from 01.12.2000, the wages would be revised only from 01.12.2002 and for the intervening period from 01.12.2000 to 30.11.2002, a consolidated amount of Rs.2400/- was to be paid at the rate of Rs.100/- per month. It was also ordered that in respect of the employees, who retired / resigned / expired between 01.12.2000 and 30.11.2002, a consolidated amount would be paid proportionately. Thereafter, the Board received representations from employees, who retired between 01.12.2000 and 30.11.2002 for increased pension and retirement benefits as the revision of wages was due in their cases also from 01.12.2000. But they were not covered by the orders of revision of wages which was given effect to from 01.12.2002. Considering their representations, the Board issued the order dated 14.11.2005, which is impugned in this writ petition and the following passage found in the impugned order is extracted below:

> "... The Tamil Nadu Electricity Board has examined the representations and has decided to allow a special concession to the pensioners who retired from the service of the Board during 01.12.2000 to 30.11.2002. Accordingly, the following orders are issued:-
>
> 1) The pension of the employees who retired / voluntarily retired / died while in service and eligible for family pension during the period from 01.12.2000 to 30.11.2002 be increased in the following manner:
>
> a) The pay last drawn by them may be increased by 6% subject to a minimum increase of Rs.600/- in the total of pay and Dearness Allowance drawn on the date of retirement and thus increase in the basic pay on the date of retirement or voluntary retirement or on the date of death shall be found out. This increased amount should be treated as personal pay.

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b) The pay + personal pay so found out shall be taken for the purpose of calculation of pension. The increased pension shall be arrived in such a way that the increase in pension including Dearness Allowance on the said date of increase will be not less than Rs.300/- and not more than Rs.1000/-. The increase will be reduced proportionately in the case of persons having lesser qualifying service. The increase in pension shall be shown separately as personal pension. The personal pension shall be taken into account for allowing Dearness Allowance.

2) The increase in pension shall be given effect to from 01.12.2002."

4. Admittedly, the petitioners had the benefit of the concession shown by the Board. But, on the contrary, the petitioners contended that by this process, the petitioners are bound to lose lot of money. Instead of revising their wages which was drawn earlier, the respondent Board is only giving some adhoc increase of 6% subject to a minimum of Rs.600/- in the total pay by which the employees will be getting pension not less than Rs.300/- but not more than Rs.1000/-. The petitioners also contend that fixing the cut off date as 01.12.2002 was illegal and they had also given examples in the affidavit. According to the petitioners, persons like the first petitioner, who retired as a Chief Engineer, will get pension only at the rate of Rs.17,153/- whereas a Chief Engineer, who retired on 31.12.2002 with the same basic pay, will get a pension of Rs.17,922/-. This really makes a huge difference of nearly Rs.769/-. This, according to the petitioners, is illegal. The petitioners are in no way responsible for the delay in the fixation of wages and once wage is fixed with retrospective effect, even the pensioners should be considered as qualified for necessary fixation and fitment and there must be a revised pension to them as otherwise, the cut off date, viz., 30.11.2002, is an artificial date which creates two classes thereby offending Article 14 of the Constitution of India.

5. The respondent Board has filed a counter affidavit dated Nil (December 2006) denying these allegations. It was clearly stated that the impugned Board proceedings was a concession shown to the petitioners based upon their representations and the cut off date is not artificial and wage benefits were given only for serving employees, who were on the roll on 01.12.2002. Therefore, necessary fitment was done in their cases. The comparison of the petitioners with those who retired before 01.12.2002 and after 01.12.2002 was not proper and they belong to two different classes. In fact, the petitioners must thank the Board because if a similar comparison is made between the persons who retired before 01.12.2000 and after 01.12.2000, again, there will be some difference in pension calculation. The impugned order shows special concession in favour of the petitioners though they were not eligible

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for any pension revision and their comparison with persons, who are serving on the date of settlement or after the date of settlement is really not warranted. The following passage found in paragraph 7 of the counter affidavit may be usefully extracted:

Para 7: "... it is respectfully submitted that fixing the date of Wage Revision as 1.12.2002 instead of 1.12.2000 is a policy decision taken by the Board and all the unions with whom negotiations were held, have agreed to that decision and signed the settlement. Therefore, the above action of the Board is not arbitrary and is quite legal in view of the fact that the pensioners have been adequately compensated. The difference in pension between a pensioner who retired before Wage Revision and after Wage Revision are always bound to arise and this is not a lone occasion. Only when pension revision is taken up such differences could be set right."

6. However, Mr. Balan Haridass, learned counsel appearing for the petitioners relied on the following decisions of the Supreme Court to drive home the point that the cut off date fixed by the respondent Board, viz., 30.11.2002, is arbitrary and violative of Article 14 of the Constitution of India.

7. The learned counsel for the petitioners relied on the decision of the Supreme Court reported in 2006 (9) SCC 630 [U.P. Raghavendra Acharya and others v. State of Karnataka and others] and the following passage found in paragraph 26 of the judgment relied on by him is extracted below:

Para 26: "These appeals involve the question of revision of pay and consequent revision in pension and not the grant of pension for the first time. Only the modality of computing the quantum of pension was required to be determined in terms of the notification issued by the State of Karnataka. For the said purpose, Rule 296 of the Rules was made applicable. Once this rule became applicable, indisputably the computation of pensionary benefits was required to be carried out in terms thereof. The Pension Rules envisage that pension should be calculated only on the basis of the emoluments last drawn. No order, therefore, could be issued which would be contrary to or inconsistent therewith. Such emoluments were to be reckoned only in terms of the statutory rules. If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1-1-1996 to the appellants, allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date."

That was a case where the retired teachers of the University and Private Aided Colleges were seeking parity with the Government College teachers since the benefit of revision of scales given by the University Grants

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Commission [for short, 'UGC'] was given to both. The Supreme Court held that since the benefit of UGC pay scales was given with effect from 01.01.1996, the petitioners who retired during the period between 01.01.1996 and 31.3.1998 were also given the benefit of pay revision including pension from that date. That is not the case of the petitioners in this writ petition.

8. The learned counsel for the petitioners also relied on the decision of the Supreme Court reported in 2006 (9) SCC 406 [K.T. Veerappa and others v. State of Karnataka and others] and the following passage found in paragraph 13 of the judgment is extracted below:

Para 13: "... However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

In the same paragraph, it is also stated that fixation of pay and determination of parity in dues is the function of the executives and the scope of judicial review of administration decision in this regard is very limited. Therefore, largely, the issue turns on the facts of the present case.

9. The learned counsel further placed reliance on the decision of the Supreme Court reported in 1991 (2) SCC 104 [Indian Ex-Services League and others v. Union of India] and more particularly, he relied on paragraph 12 of the judgment, which reads as follows:

Para 12: "... According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more."

10. But in the same judgment, in paragraph 14, the following passage is found.

Para 14: "... We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date

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of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different."

Therefore, the argument that hostile discrimination was shown to the petitioners by the impugned of the Board is devoid of merits. On the contrary, the impugned order shows concession given to them on the representation made by the employees and officers. The attack based on Articles 14 and 16 of the Constitution of India is misconceived.

11. In the light of the above, this writ petition deserves to be dismissed. Accordingly, the same is dismissed. No costs.

gri

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Board of Directors
Tamil Nadu Electricity Board
No. 800 Anna Salai
Chennai - 2

+2 ccs to Mr.M.Vaidyanathan, Advocate Sr.No.70340 & 70510.

+1 cc to to Mr.Balan Haridas, Advocate Sr.No.70471.

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